

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

SAN JOSE DIVISION

VIVIAN FIORI ARIZA, ROGGIE TRUJILLO, PAMELA NEWPORT, ROBERT DEAN, AND RAUL REYES, on behalf of themselves and all others similarly situated,

Case No. 09 CV 01518 JW

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

CLASS ACTION

Date: November 22, 2010
Time: 9:00 a.m.
Courtroom: 8

Assigned to the Honorable James Ware, Courtroom
8

Action filed on April 7, 2009

DELL INC., a corporation; BANCTEC, INC., a corporation; WORLDWIDE TECHSERVICES, LLC, an entity; DELL CATALOG SALES, L.P., an entity; DELL PRODUCTS, L.P., an entity; DELL MARKETING L.P., an entity; DELL MARKETING L.P., LLC, an entity; DELL MARKETING G.P., LLC, an entity; DELL USA, L.P., an entity; and DOES 1 Through 10.

Defendants.

1 **WHEREAS**, Plaintiffs Vivian Fiori Ariza, Roggie Trujillo, Pamela Newport, Robert
2 Dean, and Raul Reyes (“Plaintiffs” or “Class Representatives”), on the one hand, and Defendants
3 Dell Inc., Dell Catalog Sales, L.P., Dell Products, L.P., Dell Marketing L.P., Dell Marketing L.P.,
4 LLC, Dell Marketing G.P., LLC, Dell USA L.P. (collectively, “Dell”); Defendant BancTec, Inc.
5 (“BancTec”); and Defendant Worldwide TechServices, LLC, f/k/a QualxServ, LLC
6 (“Worldwide”) (collectively, “Defendants”), on the other hand, have reached a proposed
7 settlement and compromise of the disputes between them and other similarly situated individuals,
8 which is embodied in the Settlement Agreement filed with the Court; and

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10 **WHEREAS**, Plaintiffs have applied to the Court for preliminary approval of the proposed
11 Settlement, the terms and conditions of which are set forth in the Settlement Agreement; and

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13 **WHEREAS** the Court finds as follows: The Settlement Agreement was entered into at
14 arm’s-length, in a non-collusive manner, by experienced counsel and only after extensive arm’s-
15 length negotiations involving multiple mediation sessions and extensive discovery and legal
16 briefing. The Settlement bears a reasonable relationship to the claims alleged by Plaintiffs, and
17 the Settlement is sufficiently within the range of reasonableness so that notice of the class action
18 and Settlement should be given to the members of the Settlement Class, as defined in the
19 Settlement Agreement, for their consideration as provided herein; and

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21 **WHEREAS**, this Court has fully considered the record of these proceedings, the
22 representations, argument, and recommendation of counsel for the moving parties, and the
23 requirements of law, and good cause appearing,

24 **IT IS HEREBY ORDERED** as follows:

1 1. The capitalized terms used in this Order Granting Plaintiffs' Motion for
2 Preliminary Approval of Class Action Settlement shall have the same meaning as defined in the
3 Settlement Agreement except as may otherwise be ordered.

4 2. Subject to further consideration by the Court at the time of the Final Approval
5 Hearing, the Court preliminarily approves the Settlement as fair, reasonable and adequate to the
6 Settlement Class, as falling within the range of possible final approval, and as meriting
7 submission to the Settlement Class for its consideration.

8 3. For purposes of the Settlement only, the Court certifies the Settlement Class,
9 which consists of all individual consumers in California and Arizona who purchased directly from
10 Dell a Dell notebook or desktop computer with a Service Contract during the period from January
11 1, 2000 through July 31, 2010. Excluded from membership in the Settlement Class are the
12 following: (a) Defendants, the Released Parties, and their employees, their employees'
13 immediate family members, and agents; (b) retailers, wholesalers, and other individuals or entities
14 that purchased Dell notebook and desktop computers for resale; (c) any businesses or entities that
15 purchased Dell notebook and desktop computers; (d) individuals who did not purchase their
16 computers primarily for personal, family, or household purposes; (e) any judge to whom the
17 *Fiori, Newport, and Alvarez* actions are assigned and the judge's immediate family members; and
18 (f) all persons who timely and validly opt to exclude themselves from the Settlement Class.

19 4. The Court preliminarily finds, solely for purposes of considering this Settlement,
20 that the requirements of Federal Rule of Civil Procedure 23 are conditionally satisfied, including
21 requirements that the Settlement Class Members are too numerous to be joined in a single action;
22 that common issues of law and fact exist and predominate; that the claims of the Class
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1 Representatives are typical of the claims of the Settlement Class Members; that the Class
2 Representatives and Class Counsel can adequately protect the interests of the Settlement Class
3 Members; and that a settlement class is superior to alternative means of resolving the claims and
4 disputes at issue in this Action.

5 5. The Court conditionally designates the law firms of Strange & Carpenter and
6 Randall S. Rothschild, A Professional Corporation, as Class Counsel and Plaintiffs Vivian Fiori
7 Ariza, Roggie Trujillo, Pamela Newport, Robert Dean, and Raul Reyes as Class Representatives
8 for purposes of this Settlement. The Court preliminarily finds that the Class Representatives and
9 Class Counsel fairly and adequately represent and protect the interests of the absent Settlement
10 Class Members.

12 6. A Final Approval Hearing shall be held before this Court at ____ a.m. on [at
13 least seventy-five (75) days after the mailing of the Class Notice]____, 2011, at the United States
14 District Court for the Northern District of California, San Jose Division, to address: (a) whether
15 the proposed Settlement should be finally approved as fair, reasonable and adequate, and whether
16 the Final Approval Order should be entered, and (b) whether Class Counsel's application for
17 attorneys' fees, costs, and incentive awards should be approved. Consideration of Class
18 Counsel's application for an award of attorneys' fees, costs, and incentive awards shall be
19 separate from consideration of whether or not the proposed Settlement should be approved, and
20 shall be embodied in a separate order.

23 7. Not later than thirty-five (35) days prior to the Final Approval Hearing,
24 Representative Plaintiffs and Class Counsel may make a written application to the Court for an
25 award of attorneys' fees, costs and incentive awards to the Representative Plaintiffs.
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1 8. All Settlement Class Members are hereby enjoined from prosecuting separate
2 actions against Defendants asserting any of the Class Claims.

3 9. The Court approves, as to form and content, the Class Notice and the Claim Form,
4 substantially similar to the forms attached as Exhibits "B," "C," "D," "E," and "F" to the
5 Settlement Agreement. Defendants shall have discretion to make non-material minor revisions to
6 the notice before emailing or mailing, with the consent of Class Counsel. Responsibility
7 regarding settlement administration, including, but not limited to, notice and related procedures,
8 shall be delegated to an independent third-party class action claims administrator ("ICA"), subject
9 to Class Counsel's approval, which is not to be unreasonably withheld.

10 10. A settlement website in both English and Spanish shall be operative no later than
11 the date of publication of the Class Notice. The settlement website shall contain downloadable
12 copies of this Preliminary Approval Order, the Long Form Notice, the Settlement Agreement, the
13 Claim Form, and, when filed, Class Counsel's application for attorneys' fees, costs, and incentive
14 awards. The settlement website shall also contain appropriate links through which Settlement
15 Class Members can submit online claims for benefits.

16 11. Within thirty-five (35) days after this Preliminary Approval Order is entered, the
17 Class Notice will be provided to all Settlement Class Members on the Settlement Class List, as
18 defined in the Settlement Agreement. As provided in the Settlement Agreement, for Settlement
19 Class Members for whom an email address is available and to the extent practicable, notice will
20 be provided by email. For all other Settlement Class Members on the Settlement Class List,
21 notice shall be provided by first class postcard to their physical shipping address. The email
22 notice shall contain contact information to obtain a Claim Form by mail and shall also contain a
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1 hyperlink to the settlement website. The postcard notice shall also contain contact information to
2 obtain a Claim Form by mail and the address for the settlement website.

3 12. For Settlement Class Members whose email notices are returned for bad email
4 addresses, notice shall be provided by first class postcard to the Settlement Class Member's
5 physical shipping address or an updated address obtained through the National Address Change
6 Database. For mailed notices which are returned for bad addresses, the notices will be re-mailed
7 for all Settlement Class Members for whom the U.S. Postal Service provides a forwarding
8 address to the ICA.

9 13. Publication notice shall also be published once each in a weekday edition in a
10 1/10th page ad in the following regional newspapers in California and Arizona within thirty (30)
11 days of this Preliminary Approval Order: *Arizona Daily Star* (Tucson), *Arizona Republic*
12 (Phoenix), *Bakersfield Californian*, *Contra Costa Times*, *Fresno Bee*, *Los Angeles Times*,
13 *Oakland Tribune*, *Orange County Register*, *Press-Enterprise* (Riverside), *Sacramento Bee*, *San*
14 *Diego Union-Tribune*, *San Francisco Chronicle*, and *San Jose Mercury News*.

15 14. The Court finds that the Parties' plan for providing notice to the Settlement Class
16 (the "Notice Plan") described in Section III(B)(1) of the Settlement Agreement constitutes the
17 best notice practicable under the circumstances and shall constitute due and sufficient notice to
18 the Settlement Class of the pendency of the Action, certification of the Settlement Class, the
19 terms of the Settlement Agreement, and the Final Approval Hearing, and complies fully with the
20 requirements of Federal Rule of Civil Procedure 23, the United States Constitution, and any other
21 applicable law.

1 15. The Court further finds that the Notice Plan described in Section III(B)(1) of the
2 Settlement Agreement will adequately inform members of the Settlement Class of their right to
3 exclude themselves from the Settlement Class so as not to be bound by the terms of the
4 Settlement Agreement. Any member of the Settlement Class who desires to be excluded from the
5 Settlement Class, and therefore not be bound by the terms of the Settlement Agreement, must
6 mail to the ICA, pursuant to the instructions set forth in the Long Form Notice and on the
7 settlement website, a timely and valid written request for exclusion, postmarked no later than
8 fifty-six (56) days after the date of mailing and emailing of the Class Notice (the “Opt-Out
9 Period”). No one shall be permitted to exercise any exclusion rights on behalf of any other
10 person, whether as an agent or representative of another or otherwise, except upon proof of a
11 legal power of attorney, conservatorship, trusteeship, or other legal authorization that predates the
12 Class Notice, and no one may exclude other persons within the Settlement Class as a group, class,
13 or in the aggregate.

16 16. After the expiration of the Opt-Out Period, the ICA shall create a list of Successful
17 Opt-Outs. Defendants shall submit this list of Successful Opt-Outs to the Court on or before
18 _____, 2011. The Court retains jurisdiction to resolve any disputed
19 exclusion requests.

21 17. Any member of the Settlement Class who elects to be excluded shall not receive
22 any cash benefits of the Settlement, including any cash Settlement Benefit available to Settlement
23 Class Members, and shall not be bound by the terms of the Settlement Agreement. Any person
24 who is a Successful Opt-Out shall have no standing to object to the Settlement or intervene in the
25 Action.

1 18. Any Settlement Class Member who does not submit a valid and timely request for
2 exclusion may object to the Settlement Agreement. Any such Settlement Class Member shall
3 have the right to appear and be heard at the Final Approval Hearing, either personally or through
4 an attorney retained at the Settlement Class Member's own expense. Any such Settlement Class
5 Member must file with the Court and serve upon Class Counsel and Defendants' Counsel at the
6 addresses set forth in the Class Notice a written objection to the Settlement ("Objection"). The
7 Objection must satisfy the requirements set forth in Section III(B)(3)(a) of the Settlement
8 Agreement and must be filed and served no later than fifty-six (56) calendar days after the date of
9 mailing and emailing of the Class Notice. Any Settlement Class Member who does not submit a
10 timely Objection in accordance with the Settlement Agreement and as set forth herein shall not be
11 treated as having filed a valid objection to the Settlement.

12 19. Any Settlement Class Member who wishes to intervene in the Action must file a
13 motion or application to do so with the Court and contemporaneously serve it upon Class Counsel
14 and Counsel for Defendants at the addresses set forth in the Class Notice no later than thirty (30)
15 days after the date of mailing the Class Notice.

16 20. Any Class Member who wishes to appear at the Final Approval Hearing must file
17 a notice of his or her intention to do so with the Court and contemporaneously serve it upon Class
18 Counsel and Counsel for the Defendants at the addresses set forth in the Class Notice no later
19 than fifty-six (56) days after the date of mailing and emailing of the Class Notice.

20 21. In the event that the proposed Settlement is not finally approved by the Court, or in
21 the event that the Settlement Agreement becomes null and void pursuant to its terms, this
22 Preliminary Approval Order and all orders entered in connection therewith shall become null and
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1 void, shall be of no further force and effect, and shall not be used or referred to for any purposes
2 whatsoever in this Action or in any other case or controversy; in such event the Settlement
3 Agreement and all negotiations and proceedings directly related thereto shall be deemed to be
4 without prejudice to the rights of any and all of the Parties, who shall be restored to their
5 respective positions as of the date and time immediately preceding the execution of the
6 Settlement Agreement.

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8 22. The Court may, for good cause, extend any of the deadlines set forth in this Order
9 without further notice to the Settlement Class Members. The Final Approval Hearing may, from
10 time to time and without further notice to the Settlement Class Members, be continued by Order
11 of the Court.
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13 IT IS SO ORDERED this ____ day of _____, 2010.
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15 HON. JAMES WARE
16 UNITED STATES DISTRICT COURT
17 JUDGE
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